

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT AYRES and U.S. POSTAL SERVICE,
WEST MARKET POST OFFICE, Philadelphia, PA

*Docket No. 03-32; Submitted on the Record;
Issued March 4, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he is entitled to a schedule award for a permanent impairment of his lower extremities.

On May 31, 1991 appellant, then a 55-year-old letter carrier, filed an occupational disease claim alleging that on April 22, 1988 he first realized that his osteoarthritis of the weight-bearing joints of his left and right knee was caused or aggravated by factors of his employment.¹

By letter dated January 28, 1992, the Office of Workers' Compensation Programs accepted appellant's claim for aggravation of osteoarthritis of both knees.

On November 18, 1996 appellant filed a claim alleging that he sustained a recurrence of disability. By decision dated May 14, 1997, the Office denied appellant's claim on the grounds that he failed to submit any medical evidence establishing that he sustained a recurrence of disability causally related to his accepted employment injury.

On February 1 and 19, 1997 appellant filed claims for a schedule award. By letter dated March 13, 2000, the Office advised appellant to submit medical evidence in support of his claims.

In response, appellant submitted an April 3, 2000 report from Dr. Arnold T. Berman, a Board-certified orthopedic surgeon, providing a history of his treatment of appellant's knees. Dr. Berman stated that appellant was previously examined in 1997 and it was noted that he had bilateral osteoarthritis that was at least partially post-traumatic in origin. He stated that appellant was significantly disabled and having difficulty working. Dr. Berman indicated that his findings on physical examination and stated that no recent x-rays were available, but that 1997 films did

¹ The record indicates that subsequent to his injury appellant performed limited-duty work at the employing establishment.

not reveal significant osteoarthritis. He recommended that appellant undergo left knee replacement, as well as a variety of conservative measures.

In an August 9, 2001 decision, the Office denied appellant's claim for a schedule award inasmuch as the evidence submitted was insufficient to establish that appellant sustained any permanent impairment due to his accepted employment injury. Appellant requested reconsideration by letter dated September 5, 2001. In support of his request, appellant submitted an August 14, 2001 report from Dr. Norman A. Johanson, a Board-certified orthopedic surgeon, indicating that appellant was examined on August 14, 2001 and that appellant had bilateral osteoarthritis of the knees. Dr. Johanson noted that appellant needed knee replacement surgery because of his chronic pain and functional impairment. Based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, Dr. Johanson estimated that appellant had a 40 percent impairment of the whole person and a 50 percent impairment of each lower extremity. Appellant also submitted Dr. Johanson's August 14, 2001 treatment notes reiterating his impairment and whole person ratings. Appellant also submitted a letter dated September 5, 2001 requesting authorization for knee replacement surgery on both knees.

By decision dated November 20, 2001, the Office denied appellant's request for modification based on a merit review of his claim.

The Board finds that appellant has failed to meet his burden of proof to establish that he is entitled to a schedule award for a permanent impairment of his lower extremities.

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner, in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

Before the A.M.A., *Guides* can be utilized, a description of appellant's impairment must be obtained from appellant's physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent descriptions of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewed the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.⁴

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ *Robert B. Rozelle*, 44 ECAB 616, 618 (1993).

The April 3, 2000 report of Dr. Berman, a Board-certified orthopedic surgeon, revealing that appellant had bilateral osteoarthritis that was at least partially post-traumatic in origin and that he was significantly disabled and having difficulty working is not sufficient to meet appellant's burden of proof as the physician does not provide a clear picture of appellant's permanent impairment of a schedule member. Dr. Berman failed to provide detailed medical findings such that appellant's permanent impairment can be clearly visualized with its resulting restrictions and limitations.

The August 14, 2001 report and treatment notes of Dr. Johanson, a Board-certified orthopedic surgeon, indicating that appellant had a 50 percent permanent impairment of each lower extremity and a 40 percent impairment of the whole person also fails to satisfy appellant's burden. Dr. Johanson did not reference his impairment ratings to pages, figures or tables of the A.M.A., *Guides*. Accordingly, the Board finds that the Office properly determined that appellant was not entitled to a schedule award in this case.

The November 20 and August 9, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
March 4, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member